

**UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF OKLAHOMA**

**CONNIE J. GUY,**

**Plaintiff,**

**v.**

**FLEX-N-GATE OKLAHOMA, L.L.C.,  
a corporation, and DANIEL ZANKER,  
individually,**

**Defendants.**

**Case No. CIV-07-341-SPS**

**OPINION AND ORDER DENYING DEFENDANT’S  
MOTION TO DISMISS WITHOUT PREJUDICE**

The Court has considered the arguments made herein with regard to the Defendant Flex-N-Gate Oklahoma, LLC’s Partial Motion to Dismiss Plaintiff’s Public Policy Tort Claims for Failure to State a Claim [Docket No. 12] and is inclined to find the case controlled by *Marshall v. OK Rental & Leasing, Inc.*, 1997 OK 34, ¶ 23, 939 P.2d 1116, 1122 (“An employee who shows that he or she was constructively discharged due to a hostile work environment caused by sexual harassment has adequate remedies available under Title VII.”). This would result in the dismissal of the Plaintiff’s Fourth Cause of Action (a status-based hostile work environment claim) for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6), but not her Fifth Cause of Action (a conduct-based retaliation claim). *See Green v. Board of County Commissioners*, 472 F.3d 794, 803-04 (10th Cir. 2007). But the Court is mindful there are cases pending before the Oklahoma Supreme Court that could affect this determination and therefore declines to dismiss either claim at this time. Instead, the Court

elects to deny the Defendant Flex-N-Gate Oklahoma, LLC's Partial Motion to Dismiss Plaintiff's Public Policy Tort Claims for Failure to State a Claim [Docket No. 12] without prejudice to subsequent re-urging of the issues raised therein by way of summary judgment. The Court will also entertain requests for extension of the dispositive motion deadline if necessary.

Accordingly, IT IS ORDERED that the Defendant Flex-N-Gate Oklahoma, LLC's Partial Motion to Dismiss Plaintiff's Public Policy Tort Claims for Failure to State a Claim [Docket No. 12] is hereby DENIED.

**IT IS SO ORDERED** this 30th day of September, 2008.



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**Steven P. Shreder**  
**UNITED STATES MAGISTRATE JUDGE**